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Brian E. Healy

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EXAMINER

JACYNA, J CASIMER

ART UNIT

PAPER NUMBER

3754

NOTIFICATION DATE

DELIVERY MODE

07/01/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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1. Claims 3, 5, 6, 17, 30-35 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/7/2007.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 19-21, 24, 25, 28, 43, 44, 48 and 50-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Harris et al. 3,149,761. Harris discloses an actuator cap including a main wall 36 which has a generally circular cross section along its outer circumference as claimed and as shown in figures 2 and 3, the main wall varies (see claim 19) in cross section along a vertical axial dimension at 39 and 37 as shown in figure 1 and has a decrease in cross section (see claim 43) at the section beneath 43 and at the top of 39 with a thick cross section adjacent the bottom 38 which decreases to a thinner wall 36 above 39 especially at the location of 43, a flexible actuator member 20 that is integral with the main wall via the attachment to the main wall by 43, 47, 44, 48, 45, 51 and 46 and is flexible at 52 and horizontally extends transversely with respect to the main wall 36 starting at 52 and extending to 21 with an outer peripheral surface at 21 that extends laterally beyond the portion of the main wall beneath 43 but does not extend past the greatest lateral extent of the main wall at 37 with the actuator 20 having a central portion that surround and attaches to a valve stem at 13, 14 and an upright portion 18 with a curved outer surface surrounding 16 that engages with an internal surface of a housing at 26, 27 wherein 18 prevents inadvertent actuation of flexible

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actuator with 34 and guides the movement of 18 with 21. In regard to claim 43, Harris discloses a generic arcuate gusset 19. In regard to claims 24 and 51, Harris discloses the housing 25 to include an outlet opening at 31 that is larger than the radius of held container 11 at location 13 or 16 on the container. In regard to claims 48 and 50, 23 is an inner circumferential wall that receives the nozzle 14 with an interior valve stem 13, and 19 is an inwardly tapered flange that snap fits over the container at 16.

4. Claims 22, 23, 26, 45, 46 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris et al. 3,149,761. Harris discloses an actuator cap substantially as claimed but does not disclose the specific claimed dimensions. However, one of ordinary skill in the art would have considered the actual dimensions of the container and actuator to be design considerations that are obvious to and well within the scope of knowledge of one of ordinary skill in the art. In regard to claim 49, it is well known in the art to use ribs to increase the friction between two surfaces in order to better hold the two surfaces together and one of ordinary skill in the art would have considered the use of ribs on wall 23 to be obvious.

5. Applicant's arguments filed 4/8/2010 have been fully considered but they are not persuasive. In regard to Harris, Applicant contends that wall 36 of Harris does not vary or decrease in cross section, however, as seen in figure 1, wall 36 is clearly thicker in cross section adjacent the bottom 38, for at the end of the pointers for 35 and 39 in figure 1, and becomes thinner at the top of 39 and where wall 36 contacts 42 on the left side of figure 1 and where wall 36 attaches to 43 on the right side of figure 1. Element 36 is clearly an upright wall with an axial extend between the bottom 38, 35 and the end

of the wall 36 adjacent 37 on the left side of figure 1 and beneath 47 on the right side of figure 1. Applicant next rewrites the rejection and changes which elements are used to read on the claim language. The rewritten rejection of Applicant is clearly incorrect and does not read on the claim language, however, the rejection made above with 36 as the main wall and 25 as the housing as written above is being made final.

6. Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754